

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YS BUILT, LLC,

Plaintiff,

v.

YA HSING CHIANG (“CINDY”)
HUANG, GEORGE HUANG, and their
marital community,

Defendant.

CASE NO. C15-1411-BJR

ORDER GRANTING
DEFENDANTS’ MOTION FOR
ATTORNEY’S FEES AND COSTS

ORDER

On December 20, 2016, this Court entered judgment in favor of Defendants Cindy and George Huang in the copyright action brought against them by Plaintiff YS Built, LLC. The facts of this case are well known to the parties and contained in the Court’s Memorandum Opinion [Dkt. #75]. Defendants, as the prevailing parties, now move for an award of attorney’s fees and full costs under the Copyright Act, 17 U.S.C. § 505. Plaintiff opposes Defendants’ motion.

I. Appropriateness of attorney’s fees

Section 505 of the Copyright Act provides that the Court may “award a reasonable attorney’s fee to the prevailing party” in a copyright action. 17 U.S.C. § 505. “There is no precise rule or formula” for determining whether a prevailing party in a particular case is entitled to a fee award. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 (1994) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436–37 (1983)). Rather, “equitable discretion should be exercised” by the Court. *Id.* There is a “pair of restrictions” to this discretion, however: (1) “a district court may not ‘award[] attorney’s fees as a matter of course’; rather a court must make a more particularized, case-by-case assessment”; and (2) “a court may not treat prevailing plaintiffs and defendants differently. *Kirtsaeng v. John Wiley & Sons, Inc.*, ___ U.S. ___, 136 S.Ct. 1979, 1985 (2016) (citing *Fogerty*, 510 U.S. at 527, 533–34)). “[A] successful defense of a copyright infringement action may further the policies of the Copyright Act every bit as much as a successful prosecution of an infringement claim by the holder of a copyright.” *Fogerty*, 510 U.S. at 527.

Keeping in mind that “[t]he primary objective of the Copyright Act is to encourage the production of original literary, artistic, and musical expression for the good of the public,” there are five factors that district courts consider when making a fee determination: (1) the degree of success obtained; (2) frivolousness of the Plaintiff’s claim; (3) motivation; (4) objective reasonableness (both in factual and legal arguments in the case); and (5) the need in particular circumstances to advance considerations of compensation and deterrence. *Fogerty*, 510 U.S. at 524; *Inhale, Inc. v. Starbuzz Tobacco, Inc.*, 755 F.3d 1038, 1042 (9th Cir. 2014) (quoting *Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994)). “These factors are not exclusive, and not all need to be considered or met.” *Coble v. Renfro*, No. C11-0498RSM, 2012 WL 1077843, at *1 (W.D. Wash. March 30, 2012). Defendants contend that they are entitled to an award of

attorney's fees not only because they prevailed against Plaintiff's copyright claim, but also because Plaintiff's suit was frivolous, objectively unreasonable, and improperly motivated.

A. Degree of success obtained

Defendants prevailed completely on Plaintiff's copyright claim. The Court concluded that the copyrighted Schneider Plan and its alleged copy, the Stanbrooke Plan, were not substantially similar architectural works and found in favor of Defendants. Mem. Op., Dkt. 75 at 6.

B. Frivolousness and objective unreasonableness

A copyright claim is frivolous if it is "so meritless that there is little chance of success." *Broad. Music, Inc. v. C.B.G., Inc.*, No. 11-CV-40142-FDS, 2014 WL 4656879, at *2 (D. Mass. Sept. 12, 2014) (citing *Garcia-Goyco v. Law Envtl. Consultants, Inc.*, 428 F.3d 14, 20 (1st Cir. 2005); *Applied Innovations, Inc. v. Regents of the Univ. of Minn.*, 876 F.2d 626, 638 (8th Cir. 1989)). "A claim . . . is not frivolous if it is brought in good faith, in an unsettled area of the law, or with a reasonable likelihood of success." *Mattel, Inc. v. Walking Mountain Prods.*, No. CV99-8543RSWL(RZX), 2004 WL 1454100, at *2 (C.D. Cal. June 21, 2004)). Because determinations of frivolousness often shade into determinations of objective unreasonableness, the Court will consider these factors together.

Defendants argue that Plaintiff's copyright claim was legally and factually untenable. In order to prove infringement, Plaintiff was required to demonstrate that the Schneider Plan and the Stanbrooke Plan were "substantially similar in idea and expression." *Feist Pub'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). The substantial-similarity test has two prongs—the "extrinsic" test, which is an objective comparison of individual design elements, and the "intrinsic" test, which evaluates whether two works are "substantially similar in the total concept

and feel of the works.” *Nw. Home Designing, Inc. v. Benjamin Ryan Communities, LLC*, 2016 WL 5373144, at *3 (W.D. Wash. Sept. 26, 2016) (slip op.) (internal citations omitted); *see also Smith v. Jackson*, 84 F.3d 1213, 1218 (9th Cir. 1996). Plaintiff’s failure to demonstrate substantial similarity does not itself render the copyright claim frivolous or objectively unreasonable. But Plaintiff’s choice to bring suit in spite of facts that could not support the claim does weigh in favor of a finding of objective unreasonableness. First, “most, if not all” of the alleged similarities between the Schneider and Stanbrooke plans were not protected by Plaintiff’s copyright. Dkt. 77 at 5; *See* Mem. Op., Dkt. 75 at 5; *Zalewski v. Cicerco Building Dev., Inc.*, 754 F.3d 95, 106 (2d Cir. 2014); *Nw. Home Designing, Inc.* 2016 WL 5373144, at *7. Second, the lack of overall similarity between the Stanbrooke Plan and the Schneider Plan was apparent. “A [copyright] claim is more likely to be found frivolous or objectively unreasonable . . . when the lack of similarity between the unsuccessful plaintiff’s work and the allegedly infringing work [is] obvious.” *Randolph v. Dimension Films*, 634 F. Supp. 2d 779, 794 (S.D. Tex. 2009) (citing *Mallery v. NBC Universal*, 331 Fed.Appx. 821, 823 (2d Cir. 2009)). Indeed, the Court found that “[t]he Schneider floorplan [wa]s relatively minimalistic and spare,” while the Stanbrooke plan was “closed[,] and the walls [we]re more solid and confining.” Mem. Op., Dkt. 75 at 5.

Thus, the Court finds that Plaintiff did not have a reasonable likelihood of success on its copyright claim. The claim was, therefore, objectively unreasonable, if not frivolous.

C. Motivation

Defendants contend that Plaintiff’s suit was motivated “purely by spite, retaliation, and its desire to be the exclusive builder of [Defendants’] house.” Dkt. 77 at 6. While the Court does not opine on the clearly personal nature of Defendants’ accusation, it does agree that the copyright suit appears to have been instituted not to advance the public good envisioned by the

1 Copyright Act, but to bully Defendants into a building project they did not want to be part of.
2 Plaintiff obtained its copyright interest in the Schneider Plan only after learning that Defendants
3 were looking to contract with another builder, Stanbrooke Custom Homes. Mem. Op. Dkt. 75 at
4 2. It appears to the Court, then, that the copyright was merely a means to an end.

5 “The monopoly privileges that Congress may authorize are neither unlimited nor
6 primarily designed to provide a special private benefit. Rather, the limited grant is a means by
7 which an important public purpose may be achieved.” *Sony Corp. of America v. Universal City*
8 *Studios, Inc.*, 464 U.S. 417, 429 (1984). “[C]opyright assures authors the right to their original
9 expression, but encourages others to build freely upon the ideas and information conveyed by a
10 work.” *Feist Pub’ns, Inc.*, 499 U.S. at 349–50. Plaintiff’s suit did little to advance the public
11 interest, and, in fact, harmed the public by seeking to restrict access to design elements that did
12 not originate with Schneider and are commonly shared among architects. Dkt. 75, Mem. Op. at
13 5 (quoting *Zalewski*, 754 F.3d at 106); *see supra* § IB.

14 Further, Plaintiff used its copyright as leverage in what was, in essence, a contract dispute
15 between the parties. This is an abuse of copyright, and one that warrants compensation for
16 Defendants through an award of attorney’s fees. The facts in the *Garcia-Goyco* case closely
17 resemble the case before this Court. 428 F.3d 14. In *Garcia-Goyco*, the Puerto Rican Highway
18 Authority (PRHA) employed plaintiffs to draw up some documents as part of a preservation
19 project for an archaeological site. *Id.* at 16. PRHA later informed plaintiffs that it intended to
20 contract with defendant Law Environmental Consultants, Inc. (LEC) to continue the project. *Id.*
21 PRHA also requested that plaintiffs negotiate a subcontract to deliver their services directly to
22 LEC. *Id.* Upon learning that PRHA was contracting with LEC, plaintiffs obtained copyrights
23 for the documents they had prepared for PRHA and informed PRHA and LEC that they would
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1 have to negotiate for the use of these documents. *Id.* Following LEC's alleged failure to comply
 2 with an oral contract to hire plaintiffs for the final phase of the project, plaintiffs brought a
 3 copyright infringement suit against LEC, along with pendent state-law claims for breach of
 4 contract. *Id.* The district court granted summary judgment and awarded attorney's fees in favor
 5 of LEC. *Id.* at 17. The court of appeals affirmed the award as justified "because (1) the
 6 plaintiffs misused the copyright to leverage its position with respect to the contract and (2)
 7 plaintiffs' copyright claim was otherwise not sufficiently strong to warrant the federal action."
 8 *Id.* at 21.

9 Similar to the plaintiffs in *Garcia-Goyco*, Plaintiff in this case secured a copyright not
 10 only as a means of restricting the use of work product commissioned by Defendants, but also as a
 11 means of compelling Defendants to hire Plaintiff despite their dissatisfaction with Plaintiff's
 12 proposed budget for the building project. Defendants¹ paid Plaintiff \$36,000 for the Schneider
 13 Plan before choosing to employ Stanbrooke to build a more cost-conscious, mainstream home.
 14 Huang Decl., Dkt. 46 at ¶ 9; *see also* Mem. Op., Dkt. 75 at 5. Only after learning that
 15 Defendants intended to contract with Stanbrooke did Plaintiff rush to secure a transfer of interest
 16 from Errett Schneider and to obtain a copyright in Schneider's design plan. Mem. Op., Dkt. 75
 17 at 2. These facts indicate that Plaintiff obtained a copyright in order to intimidate Defendants
 18 into continuing the building project with Plaintiff. This is a misuse of copyright law and
 19 militates in favor of an award of attorney's fees.

20 **D. Deterrence**

23 ¹ The record reflects that Defendants' son, Kevin Huang, paid Plaintiff for the Schneider Plan, but the
 24 Court attributes this payment to Defendants, as they acted at all relevant times as Kevin's agents. Huang Decl., Dkt.
 46 at ¶ 9.

1 Having found that Plaintiff's copyright suit was improperly motivated, the Court also
2 finds that a fee award is appropriate to deter similar abuses of copyright and to compensate
3 Defendants for time spent defending against this suit.

4 **II. Amount of attorney's fees**

5 To calculate a reasonable amount of attorney's fees, the Court employs the lodestar
6 method, multiplying "the number of hours reasonably expended on the litigation" by "a
7 reasonable hourly rate." *Hensley*, 461 U.S. at 433. Defendants request a total of \$78,297 in fees
8 for work performed by attorneys Christian and Lawrence Linville as well as \$3,579.47 in costs.
9 Plaintiff contends that Defendants have claimed fees for which they should not be
10 reimbursed.

11 **A. Hours reasonably expended**

12 The party seeking fees "bears the burden of establishing entitlement to an award and
13 documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S. at 437. The
14 fee applicant "must submit evidence in support of those hours worked." *Welch v. Metropolitan*
15 *Life Ins. Co.*, 480 F.3d 942, 945–46 (9th Cir. 2007). "Recoverable attorney's fees may include
16 fees incurred while doing work on the underlying merits of the action ('merits fees') as well as
17 fees incurred while pursuing merits fees ('fees-on-fees')." *Thompson v. Gomez*, 45 F.3d 1365,
18 1366 (9th Cir. 1995). The Court should not consider hours that are "excessive, redundant, or
19 otherwise unnecessary." *Hensley*, 461 U.S. at 434.

20 Christian Linville avers that he spent 247.8 hours working on matters pertaining to
21 Plaintiff's copyright suit, while Lawrence Linville claims 47.6 hours of work. Plaintiff contends
22 that the number of hours claimed is excessive in several respects and should be reduced to more
23 accurately reflect time devoted to crafting the winning argument that the Schneider and
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1 Stanbrooke Plans were not substantially similar. The Court agrees and will reduce Defendants'
2 proposed figures accordingly.

3 First, the Court will exclude from the lodestar calculation time spent preparing filings that
4 were never considered by the Court. Plaintiff calls to the Court's attention to Defendants'
5 Motion to Dismiss [Dkt. #22], trial brief² [Dkt. #63], and proposed findings of fact and
6 conclusions of law. Lawrence Linville's time log indicates that he spent 14.1 hours preparing
7 Defendants' Motion to Dismiss before ultimately withdrawing it prior to its noting date.³ The
8 Court will subtract these hours from Lawrence's proposed figure.

9 Christian Linville's log indicates that he spent time preparing a trial brief and proposed
10 findings of fact and conclusions of law in spite of the Court's instruction that neither document
11 was to be submitted prior to trial. *See* Standing Order for Civil Cases, Dkt. 53 at 7; Minute
12 Order, October 18, 2016 (instructing parties to submit a joint pretrial statement instead of
13 individual trial briefs). Christian's billing log contains multiple compound entries accounting for
14 time spent working on both documents, as well as other matters pertaining to the case. Many of
15 these entries claim upwards of three hours of work, but do not show how much time was devoted
16 to each activity, making it difficult for the Court to discern how much time should be counted
17 toward the number of hours reasonably expended and how much should be excluded from that
18 number. Consequently, the Court will treat any omnibus entry mentioning work on the trial brief
19 or the proposed findings and conclusions as if the entire amount of time was spent working on
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21 ² The Court is referring to Defendants' 30-page trial brief filed on December 1, 2016 and not the abbreviated trial
22 brief filed on December 8, 2016 [Dkt. 67]. The Court's Standing Order for Civil Cases, section 11, provides that
23 "no trial briefs are allowed unless specifically ordered by the court." Dkt. 53 at 7. At the pretrial conference on
24 December 2, however, the Court granted each party leave to submit a short, five-page trial brief. Dkt. 64 at 1–2.

³ In his log, Lawrence styles the motion as one for summary judgment, rather than dismissal, but the dates on the log indicate that he was working on the motion to dismiss filed February 12, 2016 [Dkt. 22].

1 those errant filings. *See Welch*, 480 F.3d at 948 (authorizing reduction in amount of reasonably
2 compensable hours for “block billing”).

3 Similarly, the Court notes that Christian’s log contains entries related to a motion for
4 summary judgment that Defendants never filed. The entries mentioning this unfiled motion
5 indicate that it related to the defense of nonexclusive implied license, a theory that did not factor
6 into Defendants’ ultimate success in this case. The non-exclusive implied license defense also
7 figured prominently in Defendants’ response to Plaintiff’s motion for summary judgment [Dkt.
8 #44]. While the Court ultimately denied Plaintiff’s motion, it also concluded that Defendants
9 had failed to establish at the summary judgment stage that they held a nonexclusive implied
10 license. Given its rejection of this defense at the summary judgment stage, the Court will also
11 exclude the number of hours reasonably spent pursuing the license theory in both the unfiled
12 motion for summary judgment and Defendants’ response to Plaintiff’s motion for summary
13 judgment. Accordingly, the Court finds that Christian’s proposed number of hours should be
14 reduced by a total of 73.2 hours.

15 Plaintiff next argues that the Court should not award fees for time spent preparing
16 Defendants’ response to Plaintiff’s successful Motion to Quash [Dkt. 17] because Defendants
17 “lost” the motion. Dkt. 81 at 12. A reasonable fee award will normally “encompass all hours
18 reasonably expended on the litigation.” *Hensley*, 461 U.S. at 435. “The question is not
19 necessarily whether individual motions were successful . . . but whether the hours spent on those
20 issues were expended in furtherance of the litigation of the case as a whole and centered on a
21 common core of facts and related legal theories.” *E.E.O.C. v. Freeman*, 126 F.Supp.3d 560, 580
22 (D. Md. 2015) (internal citation omitted). “[T]he courts should consider the reasonableness of
23 seeking fees for failed motions in terms of how it reflects the results obtained by a prevailing
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party.” *L.H. v. Schwarzenegger*, 645 F.Supp.2d 888, 897 (E.D. Cal. 2009) (citing *Blum v. Stenson*, 465 U.S. 886, 900 (1984)). Plaintiff’s motion sought to quash two subpoenas directed at Errett Schneider, the author of the Schneider Plan. *See generally* Dkt. 17. Defendants responded that they needed access to Schneider’s records to determine if Plaintiff’s copyright interest was valid as a purported “co-author” of the Schneider Plan. Dkt. 18 at 1–2. While Defendants later conceded that Plaintiff’s copyright was valid, they should not be penalized for seeking information early in the litigation that helped them craft an ultimately successful defense.

Finally, the Court finds that Defendants have erroneously claimed 3.8 hours of legal work related to “WA law on intentional infliction of emotional distress a/k/a outrage” and “the merger doctrine regarding terms in Purchase and Sale Agreement.” Dkt. 78, Ex. at 24–25. These topics clearly pertain to state-law claims and not Plaintiff’s claims under the Copyright Act.⁴

Having adjusted accordingly, the Court finds that the number of hours reasonably expended on the successful defense against Plaintiff’s copyright claim is 202.8 hours—170.9 for Christian Linville and 33.5 for Lawrence Linville.

B. Reasonable hourly rate

A court’s “[d]etermination of a reasonable hourly rate is not made by reference to rates actually charged the prevailing party.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). Rather, the “the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and

⁴ Christian Linville also erroneously included in his proposed number of compensable hours time spent on Defendants’ Washington Consumer Protection Act counterclaim, which the Court subtracted as part of a compound entry also containing time spent on Defendants’ trial brief. Dkt. 78, Ex. A at 24–25.

1 reputation.” *Id.* at 1210–11. The “relevant legal community” is generally the forum in which the
2 district court sits. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992).

3 Both Christian and Lawrence Linville propose that the Court calculate the lodestar using
4 the hourly rates they actually charged Defendants in this litigation. Christian avers that his
5 hourly rate was \$250 in 2015 and \$260 in 2016, and Lawrence avers that his hourly rate was
6 \$275 in 2015 and \$285 in 2016. These numbers appear to the Court to be reasonable when
7 compared with other fee awards in copyright cases in this district. *See LHF Prods., Inc. v. Doe*
8 *I*, No. C16-551RSM, 2017 WL 615888, at *4 (W.D. Wash. Feb. 15, 2017) (reducing proposed
9 hourly rate to \$300); *Qotd Film*, No. C16-0371RSL, 2016 WL 5817027, at *3–*4 (W.D. Wash.
10 Oct. 5, 2016) (reducing proposed hourly rate to \$350); *Dallas Buyers Club, LLC v. Nydam, et al.*,
11 2016 WL 7719874, at *5–*6 (W.D. Wash. Aug. 8, 2016); *BWP Media USA, Inc. v. Rich Kids*
12 *Clothing Co., LLC*, No. 103 F. Supp. 3d 1242, 1250 (W.D. Wash. 2015) (finding \$350 hourly
13 rate reasonable). Using these rates, the lodestar comes to \$53,429.50.

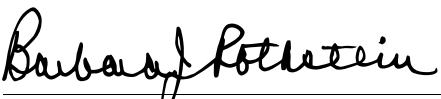
14 The Court will award fees in this amount, as well as full costs in the amount of
15 \$3,579.47. Dkt. 78, C. Linville Decl. ¶ 5; *see also* 17 U.S.C. § 505 (allowing the recovery of full
16 costs for prevailing parties).

17 **III. Conclusion**

18 The Court hereby GRANTS Defendants’ Motion for Attorney Fees and Costs Pursuant to
19 17 U.S.C. § 505 [Dkt. #77]. The Court awards Defendants a total of \$57,008.97 in fees and
20 costs.

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22 Dated this 23rd day of March, 2017.
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Barbara Jacobs Rothstein
U.S. District Court Judge